

IT 96-14
Tax Type:
Issue:

**INCOME TAX
Statute of Limitations Application**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

Case No.)

FEIN)

v.)

Administrative Law Judge
Mary Gilhooly Japlon)

TAXPAYER

Taxpayer

RECOMMENDATION FOR DISPOSITION

Appearances: Deborah H. Mayer, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue; ATTORNEY, on behalf of TAXPAYER.

Synopsis:

This matter comes on for hearing pursuant to the timely protest by TAXPAYER (hereinafter "taxpayer") of the Department of Revenue's (hereinafter "Department") deemed denial of certain refund claims. The parties filed a Stipulation of Facts on May 23, 1995. Hearing was held by Administrative Law Judge Harve D. Tucker on May 31, 1995. At issue is the date upon which interest begins to accrue in situations wherein a taxpayer is entitled to a credit due to a net operating loss carry back. Only the taxpayer's claims for additional interest on refunds paid for the years 1978 and 1979 are at issue.

Findings of Fact:

1. The parties have stipulated to the facts in this matter. A copy of the Stipulation of Facts, with exhibits, is attached hereto and made part of the record herein.

2. During all relevant time periods, TAXPAYER was a corporation duly organized and existing under the laws of the state of Delaware. The taxpayer's commercial domicile was located in the state of Wisconsin, and the taxpayer was subject to the taxes imposed by the Illinois Income Tax Act. (Stipulation of Facts, ¶12).

3. During all relevant time periods, the taxpayer prepared and filed its Federal and Illinois corporate income tax returns on a calendar year basis. The taxpayer timely filed Illinois corporate income tax returns (Form IL-1120) for each of the years 1978, 1979 and 1980. (Stipulation of Facts, ¶13).

4. For the year 1981, the taxpayer incurred a Federal net operating loss which it was entitled to carry back to the year 1978. The taxpayer timely filed a claim for refund of Illinois income tax for the year 1978 asserting an overpayment for such year by reason of the carryback of its 1981 net operating loss. The taxpayer's claim was reviewed by the Department. On December 18, 1990, the Department prepared an Auditor's Report (Form EDA-25) showing its calculation of the overpayment and interest thereon for 1978. A copy of the Auditor's Report is attached hereto as Exhibit 1. The Auditor's Report shows the overpayment to be \$212,785.00. The Auditor's Report also calculates interest in the amount of \$215,712.00 on the overpayment for the period beginning December 31, 1981 (the last day of the year in which the federal net operating loss occurred) and ending December 31, 1990. (Stipulation of Facts, ¶14).

5. For the year 1982, the taxpayer incurred a Federal net operating loss which it was entitled to carry back to the year 1979. The taxpayer timely filed a claim for refund of Illinois income tax for the year 1979 asserting an overpayment for such year by reason of the carryback of its 1982 net operating loss. The taxpayer's claim was reviewed by the Department. On December 21, 1990, the Department prepared an Auditor's Report (Form EDA-25) showing its calculation of the overpayment and interest thereon for 1979. A copy of the Auditor's Report is attached hereto as Exhibit 2. The Auditor's Report shows the overpayment to be \$232,390.00. The Auditor's Report also calculates interest in the amount of \$190,738.00 on the overpayment for the period beginning December 31, 1982 (the last day of the year in which the federal net operating loss occurred) and ending December 31, 1990. (Stipulation of Facts, ¶15).

6. On January 7, 1992, the State of Illinois issued a check in the amount of \$354,892.90 in payment of the refund for 1978. The check indicates that the interest included in the payment was \$142,658.27. (Stipulation of Facts, ¶16).

7. On June 29, 1992, the State of Illinois issued a check in the amount of \$394,173.99 in payment of the refund for 1979. The check indicates that the interest included in the payment was \$164,444.38. (Stipulation of Facts, ¶17).

8. In calculating the amounts of interest paid as a part of the refunds for 1978 and 1979, the Department used a starting date of November 18, 1984. (Stipulation of Facts, ¶18).

9. On May 25, 1993, the taxpayer filed a claim for refund of tax and interest for the year 1978. In its claim, the taxpayer contends, among other things, that, in calculating the interest to which the taxpayer was entitled on the 1978 refund of \$212,234.63, the Department erroneously used a starting date of November 28, 1984. The taxpayer contends that it is entitled to interest on the amount refunded calculated from December 31, 1981, the last day of the year in which the federal net operating loss occurred, pursuant to 86 Ill. Adm. Code Section 100.9400(c)(3)(B). (Stipulation of Facts, ¶9).

10. On May 25, 1993, the taxpayer filed a claim for refund of tax and interest for the year 1979. In its claim, the taxpayer contends, among other things, that, in calculating the interest to which the taxpayer was entitled on the 1979 refund of \$229,729.61, the Department erroneously used a starting date of November 28, 1984. The taxpayer contends that it is entitled to interest on the amount refunded calculated from December 31, 1982, the last day of the year in which the federal net operating loss occurred, pursuant to 86 Ill. Adm. Code Section 100.9400(c)(3)(B). (Stipulation of Facts, ¶10).

11. On May 25, 1993, the taxpayer filed a claim for refund of tax and interest for the year 1980. (Stipulation of Facts, ¶11).

12. The Department failed either to approve or deny the refund claims filed by the taxpayer for the years 1978, 1979 and 1980 before the expiration of six months from the date such claims were filed with the Department. (Stipulation of Facts, ¶12).

13. On December 6, 1993, the taxpayer filed its written protest to the deemed denial of its refund claims for 1978, 1979 and 1980. Such claims and the taxpayer's protest to the denial thereof are the subject of this matter. (Stipulation of Facts, ¶13).

14. On June 29, 1987, the taxpayer and seventeen of its domestic subsidiaries filed separate voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code. Confirmation of the plan of reorganization occurred on October 31, 1988, and the plan was consummated on December 2, 1988. At confirmation, the Bankruptcy Court approved the creation of A-C Reorganization Trust (the "Trust") as the entity having primary responsibility for distributions under the plan of reorganization. The right to receive the refunds of Illinois income tax and interest claimed in this matter

is an asset of the bankrupt's estate, and any amounts which become payable as a result of the allowance of all or any part of such claims are to be paid to the Trust. (Stipulation of Facts, ¶14).

15. The taxpayer withdraws its protest to the deemed disallowance of all issues raised in its claims for refund for the years 1978, 1979 and 1980, and consents to the entry of a decision by the Director finding in favor of the Department on all such issues, except for its claims for additional interest on refunds paid for the years 1978 and 1979 as set forth in paragraphs 9 and 10 above. (Stipulation of Facts, ¶15).

Conclusions of Law:

The issue herein concerns the question of the date that interest on overpayments of tax begins to accrue. Due to carrybacks of Federal net operating losses incurred in the years 1981 and 1982, the taxpayer filed claims for refund of Illinois income tax for the years 1978 and 1979, respectively. The Auditor's Reports (Forms EDA-25) for both years calculated interest due on the overpayments beginning the last day of the years in which the federal net operating losses occurred. However, the refund checks issued by the Department included interest calculated from a starting date of November 28, 1984. This is the date that the taxpayer made amnesty payments.

86 Admin. Code ch. I, Sec. 100.9400 deals with Illinois income tax credits and refunds. Subsection (c) thereof allows that interest is to be paid to the taxpayer on any overpayment of tax, penalty or interest. Section 100.9400(c)(3)(A) states the general rule in pertinent part as follows:

Therefore, the date or dates of overpayment are the date of payment of the first amount which (when added to previous payments) exceeds the tax liability (including interest and penalties) for the taxable year and the date or dates of any subsequent payment(s) made with respect to such tax liability, which in any event cannot be earlier than the last day prescribed for filing the return for the year, nor earlier than the date the return is filed. ...

Said section states the general rule that the date of overpayment is calculated from the date the actual overpayment is made. This rule applies, "... except as provided in subsection (B)". Subsection (B) specifically applies to situations involving a federal change due to the final allowance of a carryback from a loss year ending prior to December 31, 1986. Said section provides as follows:

[U]nder the provisions of the federal Internal Revenue Code, the date of overpayment shall be as of the close of the taxable year in which the deduction, losses, or other item or event occurred which created the federal carryback, or the date when the return for the carryback year is filed, whichever is later.

As the case at bar concerns carrybacks from loss years ending prior to December 31, 1986, Section 100.9400(c)(3)(B) applies as it is addressed specifically to this situation. Therefore, the Auditor's Reports were correct in calculating interest from the last day of the years in which the federal net operating losses occurred (i.e., 1981 and 1982). The interest included in the refund checks issued the taxpayer by the State of Illinois was erroneously calculated from the date of overpayment by the taxpayer (i.e., the amnesty payments made on November 28, 1984). Accordingly, the Department's denials of the taxpayer's claims for refund for additional interest are incorrect, and the taxpayer's claims for additional interest on its refunds must be honored.

Recommendation:

Based upon the foregoing, the Department's denials of the claims for additional interest are overruled.

Enter:

Date:

Administrative Law Judge